BCLP. Client Intelligent

BenefitsBCLP

TOP TEN NEW YEAR'S RESOLUTIONS FOR RETIREMENT PLAN FIDUCIARIES

Jan 02, 2014

Some New Year's resolutions are perpetual: lose weight, exercise more, spend more time with family and friends, ***become a better plan fiduciary***. These seasonal resolutions may have gotten away from you last year, or perhaps your achieved your goals for 2013 and are ready to raise your target (*e.g.*, 10 lbs. was cake and now you're going for 20!). In either case, while we can't help you with your weight, we can help you become a better retirement plan fiduciary.

To get fiduciaries started down the right path in the new year, we are providing our **Top Ten New Year's resolutions that retirement plan fiduciaries should consider making for 2014**:

10. **Obtain/review fiduciary liability insurance policies/riders.** Fiduciary liability insurance generally covers liability or loss resulting from the fiduciary's acts or omissions and is a fiduciary's "first line of defense." Policies should be reviewed to ensure adequate coverage and protection in scope and amount. Note that a *plan* may purchase fiduciary liability insurance, but only if the policy permits recourse by the insurer against the fiduciary. Conversely, a policy purchased by the employer (rather than the plan) need not include such recourse.

9. **Consider retaining professionals and other service providers to help perform certain fiduciary tasks.** Keep in mind that fiduciaries still have the duty to monitor plan service providers, including making sure their fees are reasonable if their fees are paid by the plan.

8. **Conduct a compliance review of your plan documents.** Since fiduciaries should make decisions by following the applicable plan documents (*e.g.*, plan, summary plan descriptions, investment policy, trust, committee charters, delegations, etc.), fiduciaries should make sure plan documents are consistent with each other and with actual practice.

7. **Adopt, review, and if necessary revise, your plan's investment policy statement.** In addition to plan documents, an investment policy statement ("IPS") should be established to set forth guidelines and procedures for selecting, monitoring, and removing investment funds and managers. Plan fiduciaries should monitor the IPS and keep it current to ensure (i) fiduciaries can follow, and are actually following, the IPS, and (ii) investment decisions are made in a rational manner and to further the purpose of the plan and its funding policy.

6. **Hold regular plan fiduciary/committee meetings.** Plan fiduciaries should meet periodically (we generally recommend at least quarterly) to consider information regarding performance, selection, and oversight of plan investments, investment managers, service providers, and other plan administrative matters. Minutes of the meetings should be kept to help demonstrate that the fiduciaries have engaged in a prudent process of analyzing and assessing relevant issues.

5. **Monitor performance of investment funds and investment managers.** During those meetings, and in a manner consistent with the IPS, fiduciaries should monitor plan investments and investment managers on an ongoing basis to ensure that they are meeting the criteria set forth in the investment policy statement. Fiduciaries should follow the statement in selection, monitoring and removal of investment funds and managers.

4. **Review and monitor plan expenses and fees.** Fiduciaries should ensure that all required fee disclosures are made timely and monitor fees on a regular basis. Fiduciaries should establish a policy for ongoing plan expense and fee monitoring and benchmarking. Also, as necessary, disclose plan fees to participants.

3. **Consider an audit to ensure compliance with the ERISA 404(c) and qualified default investment alternative (QDIA) requirements.** ERISA Section 404(c) provides limited protection to fiduciaries of participant-directed individual account plans from fiduciary liability for participants' investment losses; provided that the plan complies with the requirements described in 404(c). Given the complexity of the requirements, an audit may be in order to make sure the plan is operating in compliance with each of the requirements.

2. **Provide fiduciary education and training to plan fiduciaries.** The simple act of providing fiduciary training to your organization's ERISA fiduciaries is a major step to minimizing fiduciary liability. Training will educate fiduciaries as to their responsibilities and help establish a record of "procedural prudence". Moreover, the Department of Labor seems to take the view that training is evidence of a fiduciary properly exercising his or her duty of prudence. Bryan Cave's Employee Benefits & Executive Compensation Group has carefully developed comprehensive fiduciary training programs, which can be easily customized for any group of plan fiduciaries.

And, drumroll please….. the number one New Year's Resolution that we suggest retirement plan fiduciaries take in 2014 is…

1. **Practice procedural prudence.** As a general matter, being a good fiduciary is all about having a procedurally prudent process. For each fiduciary decision you should: inquire, analyze, consider alternatives, get help and advice if needed, and document the process, actions and basis for the decision. Completing the tasks on this list will help establish and demonstrate procedural prudence.

Final Words of Wisdom for 2014: "The single most important role a plan sponsor serves is being a fiduciary. With increased complexity in plan design, communications, and investment selection, a fiduciary’s job is becoming increasingly challenging,” said David Wray, President of the Profit Sharing/401k Council of America (PSCA). These challenges, coupled with the fact that any **ERISA** fiduciary who fails to comply with the applicable standard of conduct may be held ***personally liable*** for any plan losses resulting from his/her breach, make it vital that all ERISA fiduciaries understand their fiduciary obligations and the steps they can take to limit their exposure.

MEET THE TEAM

Lisa A. Van Fleet

St. Louis

lisa.vanfleet@bclplaw.com
+1 314 259 2326
